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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERIC GROVE,

Plaintiff,

- v. -

BEAN DREDGING LLC, BEAN EXCAVATION  
LLC, and C.F. BEAN LLC,

Defendants.

Case No. 07 CV 8650 (JGK)

BEAN DREDGING LLC, BEAN EXCAVATION  
LLC, and C.F. BEAN LLC,

Third-Party Plaintiffs,

- v. -

GMD SHIPYARD CORP. and BINDER  
MACHINERY COMPANY LLC,

Third-Party Defendants.

ANSWER AND DEFENSES OF  
THIRD-PARTY DEFENDANT  
GMD SHIPYARD CORP. TO  
THIRD-PARTY COMPLAINT

Third-party defendant GMD Shipyard Corp. (hereinafter "GMD"), by and through undersigned counsel, as and for its answer to the third-party complaint, alleges upon information and belief as follows:

1. To the extent that the contents of paragraph 1 of the third-party complaint recite legal argument or call for legal conclusions, no response is required from GMD. To the extent paragraph 1 of the third-party complaint includes factual allegations, GMD lacks knowledge or information sufficient to form a belief as to the truth of such allegations.

2. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the third-party complaint.

3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the third-party complaint.

4. The contents of paragraph 4 of the third-party complaint require no response from GMD.

5. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the third-party complaint.

6. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the third-party complaint.

7. Admit that GMD was and is a corporation or other legal entity organized and existing under the laws of one of the states of the United States and, except as so admitted, deny the allegations in paragraph 7 of the third-party complaint.

8. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the third-party complaint.

9. To the extent that the allegations in paragraph 9 of the third-party complaint are directed to GMD, GMD denies the same.

10. To the extent that the allegations in paragraph 10 of the third-party complaint are directed to GMD, GMD denies the same.

11. The contents of paragraph 11 of the third-party complaint require no response from GMD, as the contents of Exhibit A to the third-party complaint speak for themselves.

12. To the extent that the contents of paragraph 12 of the third-party complaint recite legal argument or call for legal conclusions, no response is required from GMD. To the extent paragraph 12 of the third-party complaint includes factual allegations directed to GMD, GMD denies the same.

13. To the extent that the allegations in paragraph 13 of the third-party complaint are directed to GMD, GMD denies the same.

14. To the extent that the contents of paragraph 14 of the third-party complaint recite legal argument or call for legal conclusions, no response is required from GMD. To the extent paragraph 14 of the third-party complaint includes factual allegations directed to GMD, GMD denies the same.

15. To the extent that the contents of paragraph 15 of the third-party complaint recite legal argument or call for legal conclusions, no response is required from GMD. To the extent paragraph 15 of the third-party complaint includes factual allegations directed to GMD, GMD denies the same.

16. To the extent that the contents of paragraph 16 of the third-party complaint recite legal argument or call for legal conclusions, no response is required from GMD. To the extent paragraph 16 of the third-party complaint includes factual allegations directed to GMD, GMD denies the same.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Third-party plaintiffs failed to properly serve process upon third-party defendant GMD.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Third-party plaintiffs' attempt to serve process upon third-party defendant GMD was insufficient as a matter of law.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Third-party plaintiffs failed to serve sufficient process upon third-party defendant GMD.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Third-party plaintiffs failed to obtain jurisdiction over the person of third-party defendant GMD.

ADDITIONAL AFFIRMATIVE DEFENSES AND CROSS-CLAIMS

GMD incorporates herein and pleads each and every affirmative defense and cross-claim pleaded in GMD's answer to the plaintiff's complaint, with equal force and effect as if set forth at length herein.

AS AND FOR A COUNTER-CLAIM AGAINST THIRD-PARTY PLAINTIFFS

1. All and singular, the matters described in the plaintiff's complaint (Exhibit A to the third-party complaint) were caused wholly and solely by the negligent and/or willful acts, omissions, breach of contract and/or breach of duty by defendants/third-party plaintiffs Bean Dredging LLC, Bean Excavating LLC or C.F. Bean LLC, or some or all of them, with no fault or neglect of GMD contributing thereto.

2. Should GMD be held liable to plaintiff on account of matters alleged in the underlying complaint (Exhibit A to the third-party complaint), defendants/third-party plaintiffs Bean Dredging LLC, Bean Excavating LLC and C.F. Bean LLC, or some or all of them, shall be liable to GMD in indemnity for all amounts which GMD is made to pay to plaintiff, together with interest, costs, disbursements and attorneys' fees.

3. In the alternative, should GMD be held liable to plaintiff on account of matters alleged in the underlying complaint (Exhibit A to the third-party complaint), defendants/third-party plaintiffs Bean Dredging LLC, Bean Excavating LLC and C.F. Bean LLC, or some or all of them, shall be liable to GMD in contribution for all amounts which GMD is made to pay to plaintiff in excess of GMD's proportionate share of fault as determined by the Court at trial, together with interest, costs, and disbursements.

WHEREFORE, third-party defendant GMD Shipyard Corp. demands judgment:

1. Dismissing the third-party complaint in all respects as against GMD;

2. On the counter-claim, granting judgment in favor of GMD and against defendants/third-party plaintiffs Bean Dredg-

ing LLC, Bean Excavating LLC and C.F. Bean LLC, or some or all of them, in indemnity for all amounts which GMD is made to pay to plaintiff, together with interest, costs, disbursements and attorneys' fees;

3. In the alternative, on the counter-claim, granting judgment in favor of GMD and against defendants/third-party plaintiffs Bean Dredging LLC, Bean Excavating LLC and C.F. Bean LLC, or some or all of them, in contribution for all amounts which GMD is made to pay to plaintiff in excess of GMD's proportionate share of fault as determined by the Court at trial, together with interest, costs, and disbursements;

4. In any event, granting third-party defendant GMD the costs and disbursements of this action, and

5. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
January 28, 2008

KENNEDY LILLIS SCHMIDT & ENGLISH  
Attorneys for Third-Party Defendant GMD Shipyard Corp.

By: 

Craig S. English (CE 9890)  
75 Maiden Lane, Suite 402  
New York, New York 10038-4816  
Telephone: 212-430-0800

TO: MICHAEL H. ZHU, ESQ., P.C.  
Attorneys for Plaintiff  
ERIC GROVE  
14 Wall Street, 22nd Floor  
New York, New York 10005  
Telephone: 212-  
Facsimile: 212-

Attention: Michael H. Zhu, Esq.

TO: PALMER BIEZUP & HENDERSON LLP  
Attorneys for Defendants/Third-Party Plaintiffs  
BEAN DREDGING LLC, BEAN EXCAVATING LLC, and  
C.F. BEAN LLC  
140 Broadway, 46th Floor  
New York, New York 10005  
Telephone: 212-406-1855

Attention: Michael B. McCauley, Esq. (MM 7231)

TO:  
Attorneys for Third-Party Defendant  
BINDER MACHINERY COMPANY LLC

New York, New York  
Telephone: 212-  
Facsimile: 212-

Attention: , Esq. ()



CERTIFICATION OF SERVICE

I, Gail Zammito, hereby certify that I have served the foregoing ANSWER AND DEFENSES OF THIRD-PARTY DEFENDANT GMD SHIPYARD CORP. TO THIRD-PARTY COMPLAINT by Regular U.S. Mail, a true copy thereof, to:

MICHAEL H. ZHU, ESQ., P.C.  
Attorneys for Plaintiff  
ERIC GROVE  
14 Wall Street, 22nd Floor  
New York, New York 10005  
Attention: Michael H. Zhu, Esq.

PALMER BIEZUP & HENDERSON LLP  
Attorneys for Defendants/Third-Party Plaintiffs  
BEAN DREDGING LLC, BEAN EXCAVATING LLC, and  
C.F. BEAN LLC  
140 Broadway, 46th Floor  
New York, New York 10005  
Attention: Michael B. McCauley, Esq.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed on January 31, 2008.

  
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Gail Zammito